D.B. Civil Special Appeal (Writ) No.785/2007
(Panna Lal Versus State of Rajasthan & Others)

Date of Order :: 9th July, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr. Ajeet Singh Dhabai for the appellant

The appellant who was a Constable in the Commandant Sixth Battalion R.A.C. was proceeded with disciplinary enquiry under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The charge of misconduct against the appellant was that he secured his employment on the basis of forged and fabricated document. Though the appellant's date of birth was 6.10.1968, he misrepresented by producing a forged document that his date of birth was 15.10.1972. It was alleged that though the appellant was over-age at the time of his recruitment, based on the forged document he represented that he was eligible.

2. The charge of misconduct was traversed by the appellant and consequently the Enquiry Officer was

appointed who recorded the statement of Head Master of (i) Government Middle School, Jocholi, Roopwas, Bharatpur; (ii) Government Middle School, Bhamtoli, Roopwas, Bharatpur; (iii) Government Senior Secondary School, Fatehpur (Bhont), Roopwas, Bharatpur and (iv) Head Master, Government Higher Secondary School, Uchchain, Bharatpur and few other witnesses. Various documents were also produced before the Enquiry Officer in support of the charge. In opposition, the delinquent-appellant produced some documents.

3. The Enquiry Officer on consideration of the material placed before him found that the charge against the appellant was proved and that he produced forged and fabricated document about his date of birth.

4. The delinquent was served with the notice, after receipt of the enquiry report, to show cause as to why he should not be dismissed from service. The disciplinary authority after hearing the appellant passed an order on 30.12.1995 dismissing him from service.

5. In departmental appeal challenging the order of dismissal, the appellate authority found no justification to interfere with that order. Thus, by order dated 15.6.1996, the appeal was dismissed by the appellate authority.

6. It appears that a criminal complaint was also lodged by Police Superintendent, Dholpur of the criminal act of cheating and forgery against the appellant. As a result thereof the appellant was prosecuted of the offences punishable under Sections 420 and 471 of Indian Penal Code. Before the Criminal Court it appears only one witness Shaukat Ali was examined by the prosecution. The Additional Chief Judicial Magistrate, Dholpur held that offence has not been established against the appellant beyond reasonable doubt and consequently by his judgment dated 29.8.2003, the appellant was acquitted.

7. Armed with the order of acquittal, the appellant made a representation for his reinstatement. When nothing was done, he filed the writ petition before this Court which was dismissed by the Single Judge on

28.4.2006 giving rise to the present special appeal.

8. The counsel for the appellant would submit that upon acquittal by the criminal court of the same charge, the appellant was entitled to be reinstated and, therefore, the Single Judge was wrong in dismissing the writ petition.

9. We are not persuaded by the submission of the counsel for the appellant. The legal position is no more res-integra that the disciplinary proceedings relating to a misconduct of an employee and the criminal case founded on those allegations constituting an offence can continue simultaneously. The standard of proof in both the proceedings is entirely different. While in the departmental proceedings, the charge of misconduct can be proved on preponderance of probability, on the other hand to bring home the guilt of an accused, the prosecution has to prove the case against him beyond reasonable doubt. Seen thus, it would transpire that the employer examined six witnesses and produced large number of documents to establish the misconduct of the appellant in the departmental proceedings. The focus seems to have lost since criminal case was in

the hands of the prosecution machinery of the State and only one witness was examined. His evidence was not found sufficient to establish the guilt of the accused (appellant) beyond reasonable doubt. In these circumstances, the acquittal of the appellant in the criminal case did not make out a case for his reinstatement when the order of dismissal had attained finality much before the order of acquittal came to be passed by the criminal court.

10. In these circumstances we find no justification to interfere with the order of the Single Judge.

11. Special appeal is dismissed in limine.